

**MINUTES
of the
FIFTH MEETING
of the
WATER AND NATURAL RESOURCES COMMITTEE**

**November 5-6, 2015
Room 322, State Capitol
Santa Fe**

The fifth meeting of the Water and Natural Resources Committee was called to order at 9:30 a.m. in Room 322 of the State Capitol by Senator Peter Wirth, chair.

Present

Sen. Peter Wirth, Chair
Rep. Candy Spence Ezzell, Vice Chair
Rep. Paul C. Bandy
Rep. Randal S. Crowder
Rep. Dona G. Irwin
Rep. James Roger Madalena
Rep. Javier Martinez (11/5)
Rep. Matthew McQueen
Rep. Andy Nunez
Sen. Cliff R. Pirtle
Sen. Benny Shendo, Jr. (11/5)
Rep. Jeff Steinborn (11/6)
Sen. Mimi Stewart
Rep. James R.J. Strickler
Sen. Pat Woods

Absent

Sen. Joseph Cervantes
Sen. Sander Rue

Advisory Members

Sen. Ted Barela
Sen. Carlos R. Cisneros (11/5)
Rep. Sharon Clahchischilliage (11/5)
Sen. Lee S. Cotter (11/5)
Rep. Nora Espinoza (11/5)
Rep. Bealquin Bill Gomez
Sen. Ron Griggs
Rep. Jimmie C. Hall (11/5)
Rep. Larry A. Larrañaga (11/6)
Sen. Linda M. Lopez (11/6)
Rep. Bill McCamley
Sen. Cisco McSorley
Sen. Gerald Ortiz y Pino (11/5)
Sen. Mary Kay Papen

Rep. Cathrynn N. Brown
Sen. Pete Campos
Rep. George Dodge, Jr.
Rep. Brian Egolf
Rep. David M. Gallegos
Sen. Stuart Ingle
Rep. D. Wonda Johnson
Sen. Gay G. Kernan
Sen. Carroll H. Leavell
Rep. Tim D. Lewis
Rep. Rick Little
Rep. Stephanie Maez
Sen. Steven P. Neville
Rep. G. Andres Romero

Sen. Nancy Rodriguez
Rep. Tomás E. Salazar
Rep. Bob Wooley (11/5)
Rep. John L. Zimmerman

Sen. John C. Ryan
Sen. William E. Sharer
Sen. John Arthur Smith
Rep. James G. Townsend
Rep. Don L. Tripp

(Attendance dates are noted for those members not present for the entire meeting.)

Staff

Jon Boller, Legislative Council Service (LCS)
Gordon Meeks, LCS
Jeret Fleetwood, LCS
Nancy Martinez, LCS

Minutes Approval

Because the committee will not meet again this year, the minutes for this meeting have not been officially approved by the committee.

Guests

The guest list is in the meeting file.

Handouts

Handouts and other written testimony can be found in the meeting file or on the New Mexico Legislature's website at www.nmlegis.gov.

Thursday, November 5

New Mexico Rural Water Association (NMRWA) Briefing

John Jones, NMRWA, provided an overview of the background, mission, membership, governance and activities of the association. He began with some background on the NMRWA, explaining that it represents 488 community water systems serving about 1.3 million customers and was established in 1978 in response to the federal Safe Drinking Water Act of 1974. The association is funded through membership dues and contracts for service, some of which are with the state's Department of Environment. The NMRWA also monitors projects for the United States Department of Agriculture (USDA) Rural Development program. Mr. Jones also discussed some of the work of the NMRWA, noting that it helps with water and wastewater system development, as well as emergency assistance to communities and source water protection plans for community systems. He also said that the NMRWA helps with solid waste management and energy efficiency assessments. Mr. Jones also discussed operator and board member training offered by the NMRWA, as well as public education and outreach efforts.

Discussion by the committee included the following topics:

- coordination between the NMRWA and the Department of Environment on training;
- Department of Environment service contracts;
- various funding mechanisms for small water systems and the difficulty faced by smaller water systems that have no tax base;
- some smaller rural systems encounter difficulty accessing appropriated funds because of application prerequisites, such as audits;
- the NMRWA tries to offer some assistance to small systems with audit requirements, but only as limited resources allow;
- the NMRWA does provide assistance to some colonias;
- the cost-sharing advantages of forming regional water systems;
- advance planning processes for small and larger water systems; and
- the NMRWA can assist all publicly funded water systems, regardless of size.

USDA Rural Development Funding

Terry Brunner, state director, USDA Rural Development, explained how USDA Rural Development funding works. He began with a brief history and overview of the USDA Rural Development programs, which include everything from housing assistance to rural business services. Mr. Brunner noted that "rural" is defined as any area of the state that is not Santa Fe, Albuquerque, Rio Rancho or Las Cruces. He also pointed out that the USDA provided over \$1.4 billion in project funding to New Mexico over five years, emphasizing that it is the go-to agency for rural project financing. Mr. Brunner provided the committee with a chart detailing various USDA funding sources and each source's allowable uses. He also provided the committee with a chart detailing various grants, loans and interest rates provided to New Mexico entities in federal fiscal year 2015. Mr. Brunner also discussed USDA outreach and education efforts, noting that training and capacity-building are important components of the work that the USDA does. For example, he explained that many water association boards are composed of aging members who are beginning to retire, taking a vast amount of institutional knowledge with them, and the USDA helps train newer members on subjects such as financial literacy. Mr. Brunner also noted that the USDA could have financed even more projects in 2015 than it did, such as helping communities with water and wastewater projects. He pointed out that improving New Mexico's infrastructure would help promote economic development.

Questions and comments from the committee included the following:

- each member of the committee asked Mr. Brunner about existing or potential projects in their respective districts, and Mr. Brunner replied that the USDA could likely help with those projects;
- the need for a statewide map showing where broadband fiber-optic networks are needed;
- the USDA has already spent \$25 million on broadband in the state;

- leveraging capital outlay funds for additional federal money would help dollars stretch further;
- some USDA money goes unspent due to a lack of projects;
- the USDA mostly works with public entities but will look at partnerships with private entities; and
- hybrid loans and grants can help communities get project funding and free state capital outlay money for other uses.

Middle Rio Grande Conservancy District (MRGCD) and Mid-Rio Grande Levee Task Force Briefing

Derrick Lente, chair, board of directors, MRGCD, provided the committee with a brief overview of the MRGCD's operations and history.

Mike Hamman, chief engineer, MRGCD, also provided the committee with an overview of the MRGCD's operations, explaining that the conservancy district operates between Cochiti Dam and the Bosque del Apache National Wildlife Refuge. He also said that the district stores water in El Vado Reservoir on the Chama River and operates diversion weirs at Angostura, Isleta and San Acacia. Mr. Hamman went on to discuss streamflow in the area from 2010 to 2015, noting that below-average to much-below-average flows over those five years, which were 44 percent of the 30-year average, have made it difficult for the district to deliver enough water to users. Also, because of restrictions in Article VII of the Rio Grande Compact on upstream reservoir storage during that period, the district has not been allowed to store water in El Vado, though the district was able to store 82,000 acre-feet of water during a two-month period when the restriction was not in place during that time. The district exhausted its share of San Juan-Chama water in 2013, he said, and in 2014 and 2015, the district did not get its full allocation of that water. Mr. Hamman also discussed forecast runoff rates and the precipitation outlook for the winter, which, due to the effects of a strong El Nino, are encouraging. Mr. Hamman detailed estimated depletions by category in the middle Rio Grande, saying that crops account for 28 percent of depletions on average. He encouraged the legislature to fully fund the Interstate Stream Commission in its efforts to comply with the federal Endangered Species Act of 1973 (ESA), and he stressed the need to replace the 2003 biological opinion that governs recovery efforts for the endangered silvery minnow with one that is more adaptive to changing conditions. He went on to discuss various MRGCD priorities, such as meeting irrigation demands, improving intergovernmental partnerships and ESA compliance. Mr. Hamman also talked about the MRGCD's partnership with the Office of the State Engineer (OSE) to help manage water operations and ensure ESA compliance.

Mr. Hamman also reported on the Mid-Rio Grande Levee Task Force, noting that the task force has not met yet in 2015 but is trying to schedule a meeting before the end of the year. He also discussed the progress on various levee projects and said that the projected costs for completing all levees are approximately \$750 million.

Discussion with the committee concerned the following:

- water banking process and protection of senior water rights holders;
- MRGCD rights are not subject to forfeiture;
- there are approximately 3,000 to 4,000 acre-feet in the district's water bank;
- the MRGCD uses some shortage-sharing techniques;
- the MRGCD's property tax authority;
- salt cedar, Russian olive and other phreatophytes do present a problem for the MRGCD;
- the U.S. Army Corps of Engineers decommissioned a levy in Bernalillo, and a portion of Bernalillo is now in the floodplain; and
- the U.S. Army Corps of Engineers is proposing a massive levee reconstruction project, and the MRGCD is providing some funding for the project.

Litigation Update and Administrative Permit Application Backlog Reduction

Sarah Bond, Office of the Attorney General (OAG), updated the committee on litigation in the United States Supreme Court between New Mexico, Colorado and Texas. She explained that a special master for the Supreme Court heard oral arguments on August 19 regarding a New Mexico motion to dismiss the case, as well as a motion to intervene by the Elephant Butte Irrigation District, but no decision had been made yet. Ms. Bond went on to discuss billing issues regarding the special master, explaining that the Supreme Court is requiring each state to pay a percentage of the special master's bill. She said that New Mexico is responsible for 37.5 percent of the total bill, and the state must pay it. She also said that the state is on hold until a decision on the motions is issued, and after that, the case could still take years to resolve. Ms. Bond explained that the next step in the process is for the special master to issue a report making recommendations on the motions, on which the parties are able to comment.

Stephen R. Farris, OAG, said that the special master's billing report indicated that the special master is drafting a report on motions, which could be ready before the end of the year.

Questions and comments from the committee included:

- the special master bills by the hour, which all litigants are responsible for paying;
- the attorney general was present and made comments at the most recent hearing in New Orleans;
- the 2008 operating agreement between Elephant Butte Irrigation District and El Paso County Water Improvement District Number One changed the way water below Elephant Butte is allocated;
- litigation in the region affects farmers and creates uncertainty for them;
- if the special master does not rule in favor of New Mexico's motions to dismiss, the case could go on for years;
- New Mexico farmers on the lower Rio Grande are concerned with Texas pumping water and with degradation in both surface and ground water quality; and
- legislators will continue to be briefed on any developments.

John Romero, OSE, explained how the office is addressing the backlog in applications for water rights permit changes. Mr. Romero said that the OSE had looked at ways of streamlining the process over the past year, such as developing a process to review applications within 10 days of submission and returning incomplete applications, which he said has yielded a positive result. He also pointed out that the OSE processes about 65,000 transactions per year, not all of which are water rights applications. Mr. Romero indicated that the OSE has made a commitment to reduce any backlog, although he also noted that recent drought conditions appear to have caused an increase in all types of applications being submitted to the OSE. He also explained that some of the backlog had come from a perfect storm of increased applications in two districts coupled with agency staff retirements, noting that the two districts, District 2 in Las Cruces and District 4 in Roswell, were also two of the largest districts in the state. Mr. Romero also discussed other efforts to reduce application backlogs, such as the creation of pamphlets and having junior staff help with application processing. He also said that productivity, particularly in District 2, has been increasing.

Questions and comments from the committee included:

- the backlog in District 4, which has gone down in the past year;
- there are several OSE staff positions that are currently not filled;
- nondomestic applications include applications for commercial, industrial and mining uses;
- the effect of transitioning from paper forms and processes to digital forms and electronic processes;
- the OSE has a system to determine valid water rights in the middle Rio Grande;
- a 10-day return policy on incomplete applications has worked well;
- recourse for well owners with lost drilling logs and wells drilled deeper than they were permitted; and
- definitions of creeks versus rivers involve the three main characterizations of waterways: ephemeral, intermittent and perennial.

Active Water Resource Management Implementation Update

Tom Blaine, state engineer, gave a brief history of Active Water Resource Management (AWRM), noting that the New Mexico Supreme Court's upholding of its constitutionality in late 2012 has paved the way for implementation and development of district-specific rules. He discussed the development of district-specific rules and explained that the rules would be implemented in phases, rather than all at once. Mr. Blaine also discussed other elements of AWRM, particularly metering and its usefulness as a water-management tool. He discussed installation of meters in several basins, ongoing plans for meters in other basins, legislative funding for current efforts and future funding requirements. Mr. Blaine also discussed development and implementation of district-specific regulations, noting that implementation of regulations in the Nambe/Pojoaque basin would help the OSE identify challenges that it will likely face in other basins. He also discussed AWRM in relation to helping the OSE promote

expedited marketing and sale of water rights, which he said would have to be a part of regulations in other basins, such as the lower Rio Grande.

Questions and comments from the committee included:

- metering costs and responsibilities may differ between surface and ground water diversions;
- meters are required on all new wells, although metering of all wells may be a good idea;
- a moratorium on supplemental wells in the middle Rio Grande;
- financial and monitoring responsibility for meters in the middle and lower Rio Grande;
- water banking and the complexity of banking certain water rights;
- water rights depletion versus diversion, particularly as it relates to drip irrigation systems and demonstrable water savings;
- publication of water rights in each district;
- the OSE favors the use of shortage-sharing agreements to priority calls;
- for expedited water rights marketing to work, the OSE has to have accurate records of water rights; and
- the time frame for completion of implementation of AWRM in various basins.

The committee recessed at 5:00 p.m.

Friday, November 6

The committee reconvened at 9:00 a.m. in Room 307 of the State Capitol.

Rio Grande Trail Commission Report

David Martin, secretary, Energy, Minerals and Natural Resources Department, reported on the proposed Rio Grande Trail. He explained that a bill passed by the legislature and signed by the governor created the Rio Grande Trail Commission, which will identify a trail alignment along the Rio Grande from Texas to Colorado and facilitate negotiations with landowners and define facilities and enhancements. Secretary Martin also provided the committee with an overview of the commission's makeup and the commissioners' backgrounds, including advisory legislative members and invited representatives from federal entities. He also listed the commission's required meetings, concluding in December 2015 with recommendations to federal, state and local entities regarding a proposed southern trail.

Questions and comments from the committee included:

- once completed, there will be approximately 500 miles of trail on both public and private lands;
- the potential uses of the trail once it is established, such as camping, fishing, outdoor fires, biking and running;

- public and private funding sources;
- negotiations with private landowners are under way;
- completion will be determined by the planning process and resulting requests for proposals regarding trail alignment, which will be issued in December 2015;
- coordination with various property owners;
- maintenance of existing, established trail segments;
- involvement of the community in the planning process is crucial;
- user fees will likely be used for ongoing maintenance of the trail; and
- ongoing concerns about funding, considering that several rest areas around the state remain closed due to lack of funding.

Committee Business

On a motion made, seconded and passed without objection, the committee endorsed a letter on behalf of the committee to Laura McCarthy, director of conservation programs for The Nature Conservancy, requesting The Nature Conservancy and the New Mexico Forest Industry Association to do research on securing sustainable funding sources for forest and watershed restoration in New Mexico.

The committee adopted without objection the minutes from the August-September meeting and the October meeting.

Proposed Legislation

By a vote of five in favor and eight opposed, the committee failed to endorse a bill (.202191.1) extending the solar tax credit.

The committee unanimously approved endorsement of a bill (.202272.1) appropriating \$1,724,000 for ground water mapping in northeastern New Mexico.

The committee unanimously approved endorsement of a bill (.201925.1) appropriating \$200,000 for boll weevil and pink bollworm monitoring.

By a vote of nine in favor and two opposed, the committee approved endorsement of a bill (.202006.1) changing the purpose of the Big Game Depredation Damage Fund to include financial compensation of landowners for the financial damages caused by big game.

By a vote of nine in favor and one opposed, the committee approved endorsement of a bill (.202382.1) authorizing the New Mexico Department of Agriculture to adopt rules for industrial hemp research.

Aamodt Settlement Update

Charles J. Dorame, chair, Northern Pueblos Tributary Water Rights Association (NPTWRA), provided the committee with a brief background on the NPTWRA, explaining that the pueblos of Nambe, Pojoaque, San Ildefonso and Tesuque formed the association to address

areas of mutual concern to the pueblos in the Aamodt Indian water rights settlement process. He also explained that the pueblos are continuing to work through the association on implementation of the settlement. Mr. Dorame went on to discuss the settlement and its benefits, including that it:

- brings an end to litigation that has gone on for over 40 years;
- provides a system and framework for cooperation among pueblo and non-pueblo users for sharing limited water resources;
- brings over \$100 million of federal money into the valley;
- brings over 4,000 acre-feet of additional water to the valley for use by pueblo and non-pueblo water users at no cost to valley residents; and
- recognizes and secures the pueblos' water rights and rights of existing water users.

Mr. Dorame pointed out that the settlement does not take water rights from any existing water users, but it secures those rights in a way that ensures continued access to water by all water users. He also noted that it does not require any individual to connect to the regional water system, as connecting to the system is voluntary.

Mr. Dorame went on to note that the settlement is complex and that much work still has to be done before it is fully implemented. He provided the committee with an overview of the various tasks that must be completed, such as filing documents in federal court, working with Santa Fe County on formation of the regional water authority and drafting a set of uniform rules for administration of water rights.

Mr. Dorame also discussed funding obligations for the settlement, noting that the state's portion of the funding is \$50 million and must be paid before construction of the regional water system begins. He urged the committee to ensure that the state fulfills its commitment to funding its share of the settlement.

Tony Flores, John Utton and Bruce Frederick testified on behalf of Santa Fe County. Mr. Flores, who is the Santa Fe County deputy county manager, said that the county fully supports the settlement. Mr. Utton explained that the settlement only addresses the pueblo claims in the area, not everyone else's. The pueblos' original claims amounted to nearly all of the water available in the basin, he said. With the settlement, however, the pueblos are giving up much of that original claim, and another 3,600 acre-feet per year will be brought into the basin to meet the needs of the area's water users. Consequently, he explained, Santa Fe County supports the settlement because it is in the best interest of both pueblo and non-pueblo water rights owners. Mr. Utton and Mr. Frederick noted that the county has made substantial financial contributions to the settlement, helped with its implementation and will be the operator and fiscal agent of the new water utility. Mr. Frederick said that while the county does have concerns about right-of-way issues with roads in the Pueblo of San Ildefonso area, the county hopes to have those issues resolved before the county has to make appropriations for the implementation of the settlement.

Larry White, an attorney for non-pueblo defendants in the Tesuque basin, explained that the pueblos originally claimed first priority for 9,000 acres, which was based on the practicably irrigable acreage (PIA) standard. This was reduced to 1,094 acres in 1987 under the historically irrigated acreage standard, he explained; but even using this standard, which would have preserved up to 350 acres for the Pueblo of Tesuque, would have resulted in having to shut down all of the acequias in Tesuque. Under the settlement, he said, the pueblo will get first priority for 71 acres and third priority on the rest, thus protecting the existing rights of non-pueblo water users, as well as those of the pueblo.

Arianne Singer, OSE, said that the settlement marks the end of the Aamodt adjudication, which began in 1966. She explained that the non-pueblo rights were adjudicated in the 1970s, while the settlement adjudicates the pueblo rights. Under the settlement, she said, non-pueblo rights are protected, with an additional 2,500 acre-feet of water brought into the basin for pueblo use and 1,100 acre-feet for non-pueblo users. In addition to providing for a clean, reliable source of water for residents, the new regional water system will also provide much-needed access to water for firefighters in the region, she added. Also, as part of the settlement, the pueblos have agreed that the state engineer will be the water master for the region, she said.

Representative Carl Trujillo also discussed the Aamodt settlement, saying that the population in the basin is made up of 6,590 non-pueblo inhabitants and 1,465 pueblo inhabitants. He also discussed the number of domestic wells in the basin, pointing out that most of them are less than 100 feet deep. Representative Trujillo went on to discuss the construction and management of the regional water system and several other components of the settlement, such as non-native water rights being subject to a priority call and the division of water rights between pueblo and non-pueblo users. He also discussed concerns his constituents have voiced regarding the settlement, such as the 800 objections to the settlement that have been filed and the high number of packets mailed by the OSE to residents in the basin that were returned, as well as how non-responders will be treated in the adjudication process. In addition, he expressed concern over rights of way over pueblo lands, how that has affected his constituents and the need to address these concerns before the settlement is implemented.

Discussion and comments from the committee included:

- the projected cost per household for 5,000 gallons of water per month is approximately \$45.00, compared to \$65.00 per month for a well amortized over 30 years;
- rights of way for the regional water system are a non-issue because the easements granted under the settlement for the system are for the life of the project; and
- Santa Fe County wants the right-of-way issues for roads over pueblo lands to be resolved at the same time as the Aamodt water issues are resolved.

Adjournment

There being no further business, the committee adjourned at 3:45 p.m.